

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

E. JEROME MALRY)	
)	
)	
Complainant,)	
)	
vs.)	No- 02-0273
)	
THE PEOPLES GAS LIGHT AND)	
COKE COMPANY,)	
)	
Respondent.)	

RESPONDENT’S BRIEF

THE PEOPLES GAS LIGHT AND COKE COMPANY (hereinafter “Peoples Gas”), Respondent herein, by and through one of its attorneys, Greta G. Weathersby , files its Brief, pursuant to Notice dated August 3, 2005 from the presiding Hearing Examiner, and pursuant to 83 Ill. Adm. Code § 200.840(b), and in support thereof states as follows:

INTRODUCTION

E. JEROME MALRY (“Complainant”) filed a Formal Complaint (the “Complaint”) with the Illinois Commerce Commission (the “Commission”) alleging a lack of service at 7455 South Merrill, Chicago, Illinois (the “Premises”), and a request for audit and investigation.

PROCEDURAL HISTORY

Complainant filed the Complaint on April 19, 2002. The hearings were continued from time to time while discovery was conducted between the parties. An evidentiary hearing held on January 28, 2003 by Administrative Law Judge Casey and the record was marked Heard and Taken.

During the hearing, the Hearing Examiner made several evidentiary rulings. A total of 47 Exhibits were entered into the record. The Complainant had 41 Exhibits (A list of those admitted exhibits are attached hereto as Ex. A). The Respondent had 8 Exhibits. (A list of all exhibits are attached hereto as Ex. B).

The Complainant objected to Respondent's Exhibits 3 and 8. The presiding Referee required the parties to file supporting briefs on the objections and reserved ruling on the admission of Respondent's Exhibits 3 and 8. Respondent. * Respondent stands on the arguments set forth in its Response To Complainant's Objections to Respondent's Exhibits (7 and 8) filed on February 11, 2003. (Respondent's Response noted that Complainant's objection referred incorrectly to Exhibit No. 7 and not 3.) Based upon objections by the Complainant, the Hearing Examiner reserved ruling on the admission of Respondent's Exhibits 7 and 8. The parties briefed the issues and no ruling was provided by the Hearing Examiner regarding the admission of the Exhibits.

Also, a 244 page transcript of the hearing was prepared by Sullivan Reporting Company (hereinafter "TR").

Between February 13, 2003 and August 3, 2005, no Commission action was taken on this case.¹ On August 3, 2005, the Hearing Examiner issued the Notice setting the instant briefing schedule. Pursuant to that Order, Respondent files its brief.

Summary of Respondent's Position

On May 17, 2000, the Complainant applied for gas service at 7449 S. Merrill Ave. BLDG, a large multi-unit building and a succession turn on occurred immediately. Because Peoples Gas was unable to gain access for the initial appointment and complete the turn-on

¹ On January 26, 2005, Complainant filed a Writ of Mandamus in the Circuit Court of Cook County, See 05 CH 00260 requesting the Commission to enter an order.

process, the Premises continued to receive uninterrupted but unbilled gas service from May 17, 2000 to June 15, 2001.

On or about May, 2001, the Complainant wrote a letter to Peoples Gas and stated that he had not received a bill over the preceding year. The Complainant's letter put several addresses and accounts together, but Peoples Gas showed that there were two accounts. A store account at 2136 East 75th street under account number 4500022187220 and meter number 2007144. There was a separate meter number for the large multiunit building which was in dispute under account number 4500021577073 and meter number 1683266.

Thereafter, the Complainant granted Peoples Gas access to read the meter and the Account records were corrected to the Complainant's name and he was billed for the preceding year or approximately 333 days for the Premises. After receipt of his first bill, the Complainant ultimately filed a complaint with the Commission disputing the bill, all subsequent estimated readings and deposits. Peoples Gas conducted a complete field and system investigation and found that actual readings had occurred and the account was rebilled appropriately. The Complainant continued to dispute the billed amounts, request rebillings and lodged various complaints while continuing to make partial payments on a gas bill that was in excess of \$50,000.

In summary, the record is voluminous and filled with testimony and exhibits but the testimony and exhibits consistently show that Peoples Gas has not violated any rules and regulations of the Commission and that the Complainant should be ordered to pay his gas bill which as of January 14, 2003 amounted to \$75,664.40.²

² Complainant's Account was terminated on April 30, 2003 leaving a final bill after application of the deposits of \$70,665.64, plus dpcs.

Statement of Facts

At that hearing, the Complainant was represented by Counsel, Attorney Rosemary Triplett. The Complainant, Jerome Malry, was his only witness (Tr.22). Peoples Gas was also represented by Counsel, Attorney Brian McCarthy. Two witnesses appeared and testified on behalf of Peoples Gas, a Mr. Peter Coyle and Mr. Jeffrey Schaeffer.

A. Complainant's Testimony and Exhibits

In Complainant's opening statement, which was not evidence, he provided that he was seeking an investigation of the bills at the disputed address a deduction for any penalties of approximately \$19,000 and compensation for his time and efforts. (Tr. 22-24).

a. The billing address

The Complainant testified that he applied for gas service on May 8, 2000, and that he received a gas account number at that time. (Tr.27). The Complainant testified that the address that was subject to the dispute was 7455 South Merrill, 2136 through 48 East 75th Street, Chicago, Illinois. He stated that the building was a corner building with two addresses. Id. He also provided testimony that the numbering on the Peoples Gas bills showed the address of “7449”, but should have been 7455 South Merrill. Plaintiff testified that he paid the bills that were addressed for 7449 South Merrill. (Tr. 94, L 15-16). On cross-examination, the Complainant testified that there were two addresses at issue. (Tr. 84). Those addressers were “7455” rather than 7449, as billed by Peoples Gas, and 2136 75th Street. (Tr. 85, 93). On direct examination, the Complainant had testified that he paid the bills that were addressed to 7449 South Merrill.

b. Building

The Complainant described the large size of the building in great detail. He stated that

there were “39 apartments” and “7 commercial spaces” (Tr.30).

c. Account numbers, meter and meter location

He testified that the account number in question was 4500022187220. The Complainant also testified that the service address was 2136 E. 75th Street and that the meter number was P 2007144. (Tr. 52). Subsequently, he complained about the huge bill that he received. Complainant’s Ex. 15. This bill showed that the Account number was 450002157 7073 and the meter number was P 1683266. The Complainant further testified that there was only one meter – the house meter. (Tr. 50), but that there were separate meters for the apartments and commercial spaces. The Complainant clarified through his testimony that the only issue was the one meter. He testified that “what this hearing’s about, the one house meter.” (Tr. 51).

The Complainant also described the location of the meter and the difficulty of gaining access. He stated, “First of all, you have to get into one of the entrances to get inside the building there is a door that goes to the boiler room area that has to be unlocked and then there’s actually a boiler room that has to be unlocked. So there’s several doors. (Tr. 77).

He further testified that during 10/00 and 10/10/01, that only one (1) person, Brett Hardt, had the keys to the boiler room. He further testified that Brett Hardt did not live at the building. (Tr. 95-96). He testified that Mr. Hardt was the “manager of all my properties”(Tr. 96).

d. Bills, installment plan, and deposit request

The Complainant testified that he had no record of contacting Peoples Gas between May, 2000 and May 2001. (Tr. 91). The Complainant testified that he received numerous bills for small amounts under the account number ending in 7220. (Tr. 29- 47.) The Complainant also testified that he was aware that such gas bills were too low for such a large building. (Tr. 92-93 L. 18)

Finally, the Complainant testified that he received a bill dated for 10/21/03 for \$69,024.75 (Tr. 56); Complainant's Exhibit 15. This bill showed that the Account number was 450002157 7073 and the meter number was P 1683266. He testified that at that same time he also received a letter from Peoples Gas. Tr. 56-57. He quoted from the Peoples Gas letter as follows: " We will be more than happy to establish a monthly payment plan for up to 17 months in which to pay off this balance without any late fees being added to the account." (Tr. 58, L 7-10). Later, the Complainant testified that he never received the bill related to the offer to start an installment payment plan. (Tr. 63). Later, the Complainant testified that he was "startled" by Peoples Gas' request for a Deposit. (Tr. 62.)

e. Prior building ownership and Complainant's records

The Complainant further explained that he owned at least 8 other commercial properties which included a total of over 300 units or apartments. (Tr. 31). He stated that he used "Tenant Pro System" for the "accounting and all—everything having to do with the running of the properties") (Tr. 31). He also testified that he used "Outlook" to track dates and vendors (Tr. 32). The Complainant testified that he used one of these systems to track his appointments with Peoples Gas. (Tr. 32-33). He testified regarding Complainant's business records that used to task numbers. Exhibits 41, 40 and 42. The entries related to Peoples Gas were read into the record as follows:

"Appointment with Peoples Energy for 700 reading."... start of 10/2/01, 10:00 a.m. (Tr. 35);

"BH reports no show. Waited until 12 noon;

"PE call from Barna regarding 75th street wheel, Friday, November 2,2001. ...Barna eager to resolve bill. Informed him I had not received any bill. Says he will get something to me right away. (Tr. 36);

f. Conversation with ICC and Peoples Gas

The Complainant stated that he contacted the Illinois Commerce Commission. (R. 39). He also testified that he obtained a written response from a Peoples Gas Special Services Representative, Jeffrey Schaffer. (Tr. 40). The Peoples Gas response provided the reason why Peoples Gas had not gained access to premises. He read the Peoples Gas response into the record. It provided that “it had been found that all appointments to read the meters and to transfer services into your name were not kept by you and this is the reason for the delay.” (Tr. 40)

The Complainant was asked whether he spoke with Peoples Gas after the date of the written response. The Complainant, upon further questioning by his counsel, Complainant could not provide a date. The Complainant testified, “Not any date. Just in general.” (Tr. 42). Upon further questioning by his Counsel, regarding what happened, the Complainant testified that “Nothing happened.” A few moments later, the Complainant stated, “I apologize for saying there wasn’t a response.” They did come out--- to get this first reading, they had to come out and read the meters.” (Tr. 43, L 20-22). Thereafter, the Complainant testified that “And for four or five months, I received bills regularly.” (Tr. 44).

g. Estimated bills

The Complainant testified that Peoples Gas read his meter and gave him a \$7000.00 credit once the Company realized that the bill was overestimated. (Tr. 73).

B. Peoples Gas Testimony and Exhibits

Two witnesses testified on behalf of Peoples Gas. Mr. Robert Coyle, and Mr. Jeffrey Schaeffer.

a. Investigation of Premises: meter, meter location and appliances

Mr. Coyle testified that he had been employed by Peoples Gas for 28 years and worked for the last 13 years as a Field Supervisor (Tr.102). He testified that he also conducted high bill investigations and was also trained as a service man in the field for ten years and had done pipefitting and furnace work for many years including the inspection of furnaces and boilers (Tr. 103, 108)

Mr. Coyle testified that on April 25, 2002 that he had investigated the 7449 Merrill Building. Mr. Coyle explained and verified Respondent's Exhibit 1 as his report of his visit to the premises which verified that the meter number was 1683266 and the reading was 99450. He testified that the Complainant was present during the investigation and there was also a service guy. (Tr. 104). Mr. Coyle testified that he was at the building to verify the appliances, the building meter and what appliances the building meter supplied. (Tr. 105). Mr. Coyle also had pictures of the meters. (Resp. Ex. 2). Mr. Coyle presented photos which showed the appliances that were connected to Meter No. 168266. Respondent's Exhibit 2.

Mr. Coyle described the intricate and locked nature of the Premises as follows: “because it was all locked up, you couldn’t get, anyway. And Mr. Malry, you know. Let me in the front door and guided me through the building to the courtyard to the furnace room and then to the meter room. (“Tr. 105”). He listed the doors that he walked through before getting to meter room and described it as “pretty secure” (Tr 106).

He testified that there was one building meter and 39 or 40 other smaller meters for the cooking accounts. (Tr. 106). The building meter was described as a rotary meter that supplied gas for just the heat and hot water for the whole building including 75th street. There was a large furnace. “1,800,000 BTU” hot water boiler (Tr. 107). It was described in fair condition and

needed some adjustment. (Tr. 107) He also observed a 250,000 BTU water heater which was relatively new. He testified that the way it was vented that it needed a cap on it and that the company left him a 716 to identify the problem that had to be repaired with water tank (Tr. 110).

The report stated that there were 42 apts. (Resp. Ex. 1). Mr. Coyle testified that he didn't realize stores were on the premises "so 39 plus the stores came to 42 on 75th street". (Tr. 112). He testified that the report and pictures were done in order to complete a No. 8 Report pertaining to an ICC or other customer complaints about bills (Tr. 117.)

Mr. Coyle described the gas usage as follows:

"That – the boiler itself will burn 1,800 feet of gas – cubic feet of gas an hour. It's on for an hour straight, it will burn that much gas straight. Plus, the water heater comes on and off will burn 250 feet of gas an hour, just the water heater by itself.

And with heating a building of that size for 39 apartments, plus, you know, a few stores, it's on quite a bit"

(Tr. 117 L. 5-13)

It was stipulated that the building did not supply hot water for the commercial spaces (Tr. 123). Mr. Coyle also testified that he was "not aware" of any other actual readings between May, 2000 and April 25, 2002. (Tr.118)

b. Investigation of Account

Mr. Schaeffer also testified on behalf of Peoples Gas. He testified that he was a Supervisor of Special Services. He had a combined 22 years of experience and that his duties included investigating billing complaints. (Tr. 124). He testified that he had conducted high bill complaints, informal ICC inquiries, Citizens Utilities Board, Presidential inquiries and Better Business Bureau inquiries (Tr. 124)

In the course of his duties, he investigated the Complainant's account for the Premises, which the Peoples Gas identified as 7449 South Merrill. Mr. Schaeffer explained that the Complaint had an account at 7449 and 2136 E. 75th Street, but that the investigation centered on 7449 Merrill, the Premises. (Tr. 128).

Mr. Scaheffer testified that on or around May 17, 2000, Peoples had scheduled an appointment at Complainant's Premises in order to read the meter and to succeed the service in Mr. Marly's name. (Tr 128). He testified that there was no one there to admit and subsequent to that, we were never contacted again to send someone out there. (Tr. 129). Mr. Schaeffer testified that the only reason that it was initiated into the Complainant's name was in May 2001 that a letter was sent and Peoples became aware that he was the responsible party. He testified that service was initiated in his name back to May 17,2000 (Tr. 129).

In the course of that investigation, Mr. Schaeffer testified that he prepared a summary of Complainant's account covering the period from when the account began, in May 2000 to January 14,2003 (Tr. 131-132). The account summary was marked as Respondent's Exhibit 3 for identification. The Complainant objected to the introduction of the summary transcript and this issue was reserved (Tr. 136).

Mr. Schaeffer explained the account summary (the "Transcript") at length. (Tr. 131). He testified that the Transcript showed the occasions of actual meter readings, estimated meter readings, and manual estimated based upon degree day analysis. He testified that the Meter number was P 1683266 and that the account number was 4500021577073. (Tr. 153).

i) Actual Readings

Mr. Schaeffer reviewed the Transcript row by row to show why estimated readings were present, when bills were deducted and the meaning of the grayed out section of the Transcript,

the dates of actual readings and the resulting bill. He testified that a bill for 333 days of service in the amount of \$49,293.50 for the period between 5/18/2000 and 7/17/2001 was sent. This was shown on the Transcript, Line 44. He also testified that Peoples Gas records showed that several actual reads had occurred at the Premises and that the estimated bills were recalculated and re-billed which resulted in an increase (Tr. 143). The actual readings occurred on 8/18/2000; 7/17/2001; 8/16/2001; and 10/2/2001, Respondent's Exhibit 3, Lines 40-44. After rebilling, the net bill was \$53,685. (Tr. 143)

ii) Degree Day Analysis

The customer requested a re-bill on a month by month basis. (Tr. 145). Mr. Schaeffer testified that the company therefore conducted another analysis of the bills. From October 2, 2001 to October 17, 2001 and also October 1 to November 16, 2001, the bills were cancelled because the customer had requested the actual usage for each billing period (Tr. 0159-160). This was shown in Respondent's Ex 5.

Peoples Gas completed the rebilling and it was explained in Respondent's Exhibit 3. Mr. Schaeffer testified that it was shown in Lines 36 going up until Line no. 17. (Tr. 146.) He testified that he used the Degree Day Analysis to calculate the amount used. (Tr. 146). Mr. Schaeffer also produced the documents as Respondent's Exhibit 6 which showed each bill and the underlying degree day analysis for each month in question. (Complainant's counsel agreed that she had these documents (Tr. 160- 162)

Mr. Schaeffer also testified that he prepared a degree day analysis for the period between October 2, 2001 to April 25th 2002. (Tr. 167.) Respondent's Exhibit 7 supported this testimony.

He explained the degree day analysis (Tr 167- Line 8 – 170, Line 6) . He testified that during that period the Premises would have used 6.10 therms per degree day. (Tr170)

He also compared it with another billing period, from May 17, 2000 and July 17, 2001 which showed that the gas used per degree day was 5.534 therms. (Tr. 170.) He testified that this showed consistent usage Id.

He also testified that the Respondent's Exhibit 3 showed credits for all payments received from the Complainant. (Tr. 172.)

He testified that the original bill was \$56,853.62 but because of the customer's request for a manual rebilling, the amount increased by \$4831.77 and caused balance of \$61,685. (Tr. 147). See, Respondents Exhibit 3, Line 36, Line 17.

iii) DPCs

He testified that because of the rebilling, that the previously charged late fees were wiped out or eliminated up to the February 18, 2002 balance. (Tr. 148, 150). He also explained that \$7169 in dpcs had been deducted from the bills and that the adjustment was shown on Line 11 of the Transcript. The deduction did not apply beyond March 9, 2002. (Tr. 150).

iv) Security Deposits

Mr. Schaeffer also testified that the company had requested a security deposit which was shown in the remarks column of the Transcript. (Tr. 153). The deposit was requested because of late payments. (Tr. 153.) Mr. Schaeffer also testified that on the bottom of the Complainant's bills for the period between October 14, 2002 to November 13, 2002, that the deposit request was clearly printed on the bill. (Tr. 152-153)

v) Peoples Gas Meter reading attempts

Mr. Schaeffer also testified regarding appointments including the initial turn on appointment. Using Respondent's Exhibit 4, the company's business record showed that a Peoples Gas Representative was at the premises at 1:12 p.m. in the afternoon and could not get

in. He testified that Peoples Gas tried to complete the turn on appointment on several occasions. (Tr. 158.) The exhibit showed attempts on August 16, 2001 and October 2, 2001.

He further testified that he had located records from the meter reading department and the records were presented as Respondent's Exhibit 8. Mr. Schaeffer explained that the documents showed the meter reading route and notes taken at the time of the attempted meter reading. (Tr. 181.) He testified that there were numerous entries during the period between which showed for the 7449 address "not H-O-M" which meant not home. (Tr. 183.) It showed Peoples attempt to gain entry every other month. Id.

In closing, he testified that inclusive of January 14, 2003, that the billing on the account was \$75,664.40. (Tr. 153)

ARGUMENT

Complainant has failed to establish that Peoples Gas is in violation of the Public Utilities Act, 220 ILCS 5/1-101, et seq., or any order or rule of the Commission and, therefore, the Complaint should be denied. The Commission is given the authority to hear complaints on "any act or things done or omitted to be done in violation, or claimed violation, of any provision of [the Public Utilities Act, [220 ILCS 5/1-101, et seq., the "PUA"] or any order or rule of the Commission". 220 ILCS 5/10-108. The burden of proof is on the Complainant to establish the violation. City of Chicago v. Illinois Commerce Commission, 13 Ill.2d 607, 150 N.E.2d 776 (1958), see also 83 Ill. Admin. 200.570 (requires the Complainant to open and close proceedings, indicating that the Complainant has the burden of proof, just as the plaintiff has the burden of proof in the trial courts). As shown below, the Complainant herein failed to meet his burden and this case represents no more than a stall technique to avoid paying a bill that was issued more than (4) four years ago.

A. The Commission's Rules Allow For Estimated Bills

Peoples Gas has not violated Public Utilities Act or any order or rule of the Commission with respect to Complainant's Gas service. The gist of the allegations in the Complaint is that Peoples Gas provided a lump sum or balloon bill and several estimated gas bills and that the \$ 75,664.40 amount presently sought by Peoples Gas is incorrect. The evidence presented at the hearing shows that the Complaint is without merit.

While a gas utility is required to read the meter every other billing period, the Commission's rules allow the utility under certain circumstances to consecutively estimate bills. Under 83 Ill. Admin. Code 280.80(a), a utility may consecutively estimate bills when: (1) the procedure used by the utility to calculate estimated bills has been approved by the Commission; and 2) the word "estimate" appears prominently on the face of the bill, in a manner previously approved by the Commission. A careful review of the bills in Complainant's Exhibit 15-28 shows that Peoples Gas' bills show in the current usage box when they are based on an estimated reading, as is required in the bill format approved by the Commission in Peoples Gas' Tariff.

Part 280.80 further provides that a Gas utility is allowed to consecutively estimate bills when, among other reasons: (1) the customer has otherwise made an actual reading of the meter unnecessarily difficult; or (2) circumstances beyond the control of the utility make an actual reading of the meter extremely difficult. 83 Ill Admin. Code 280(b) (3) and (4)

In this case, the May 17, 2000 initial reading did not occur due to the lack of access. (Tr. 129). Subsequently, the Complainant received gas for 333 days without receiving a bill. After the bill was established, it remained difficult to gain access. Respondent's Ex. 8 produced by Mr. Schaeffer showed the number of times that the meter readers attempted to gain access but the Complainant or his agent were not home.

Further, the uncontradicted sworn testimony from both the Complainant and Mr. Coyle provided that the meter was located in the basement of the premises behind several locked doors. (Tr. 77, 105-106). Therefore, to read the meter, Peoples Gas would have to be given access to the Premises and the room where the meter was located inside the Premises. Moreover, Complainant's testimony it is clear that only one person, Mr. Bred Harte, was available to allow access. He further testified that he did not live there and helped the Complainant to manage at least 8 other large commercial properties. (Tr. 96). Therefore, it is very clear that no one was at the Premises to give access to a meter reader during the vast majority of the time.

Furthermore, despite the fact that Complainant and his agent were rarely at the Premises to provide access, Complainant did little to provide access or meter readings to Peoples Gas. Despite his sophisticated computer system and ownership of multiple properties, the Complainant testified that he had no record of contacting to Peoples Gas to provide meter readings or special access to Peoples Gas prior to May, 2001. (Tr. 91.) Clearly the Complainant had used gas and heated his commercial Premises for almost a year and he was clearly aware that he was not receiving bills.

After Peoples Gas obtained access to read the meter, it quickly sent a make-up bill to the Complainant based upon that reading. Consequently, Peoples Gas' bills which included an initial estimated reading, did not violate the PUA or the Commission's rules. Accordingly, both subsections of Section 280.80 would apply and Complainant and his evidence fails to show that the lump sum bill or any estimates violated a Commission's rule or that the billing was incorrect.

B. Peoples Gas' Billing of the Account for unbilled Service is in Compliance with the PUA and the Commission's Rules.

The Complainant failed to show that Peoples Gas' bills for the Complainant's account violated the PUA or the Commission's rules. 83 Ill Admin. Code 280.100(d) provides that:

When past due bills occur following the issuance of a “make-up” bill for previously unbilled utility service resulting from two or more consecutive estimated bills, utility billing error, meter failure, or undetected leakage or undetected loss of service, except in situations where tampering is involved, and where the “make-up” bill exceeds the otherwise normal bill for such billing period by 50%, a utility shall review the bill with the customer, and shall offer to accept payments toward the liquidation of the amount over a normal bill over a period mutually agreed to by the utility and the customer. This period of time shall be at least as long as the period over which the excess amount accrued. Where the excess billing resulted from undetected leakage or loss of service, the period shall be extended so that the bill rendered will not be greater than a normal bill, plus 50%.

This is interpreted to provide that when a gas utility issues a make-up bill that exceeds the normal bill for the period by 50%, the utility must give the customer the same amount of time to pay off the make up bill (without interest) as the period that the bills were underestimated. 83 Ill Admin. Code 280.100(a) and (b) also provide that:

- a) A utility may render a bill for services or commodities provided to:…
 - 1) A non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.
- b) No customer shall be liable for unbilled or misbilled service after expiration of the applicable period except in those instances to which 83 Ill. Adm. Code 500.240(a), 83 Ill. Adm. Code 410.260(c), or the following subsections of this Section apply. [emphasis added]

83 Ill Admin. Code 280.100(a) and (b) limits utilities from sending bills to non-residential customers more than two years after the gas was supplied.

In this case, Peoples Gas has complied with the requirements in 83 Ill Admin. Code 280.100. It billed Complainant for approximately 13 months of service. Mr. Schaeffer testified that the Company offered Complainant a repayment plan for 17 months, without any late fees, being added to the account. (Tr. 58).

Peoples Gas offer to Complainant of 17 months, without interest, to pay the corrected make-up bill was in full compliance with 83 Ill. Admin 280.100(d). Complainant however, rejected the offer. He acknowledged receiving the letter but failed to take action to show that he accepted it. Consequently, Peoples Gas's billing of the Complainant is in compliance with the PUA and the Commission's rules.

C. Peoples Gas Also Had Numerous Actual Meter Readings To Support The Amount Of Gas That Was Used At The Premises.

The Complainant's allegations that the bills were incorrect is not supported by the record. There is no question how much gas was used at the Premises. Respondent's testimony and exhibits showed that meter no. 1683266 was used at the Premises. (Tr. 104). The gas meter is the best indicator of how much gas was used - not the Complainant's guesses. Peoples Gas obtained meter readings at the Premises on several occasions. Respondent's Exhibit 3. On August 18, 2000, Peoples Gas obtained a reading of 8595; On July 17, 2001, Peoples Gas obtained a reading of 60128; On August 16, 2001, Peoples Gas obtained a reading of 61298; and On December 2, 2001, Peoples Gas obtained a reading of 63721

It is undisputed that it was a very large building with 39 units that utilized a furnace and a hot water heater. See Respondent's Exhibit 2. The heating specifications for the units was also undisputed. Simply put, Complainant's entire case is simply that he didn't use that much gas but he fails to carry his burden of proof to support this assertion in any manner to allow an objective quantification of the gas used at the Premises over that first 333 days. On the other hand, Peoples Gas has provided numerous approved methods to show the amount of gas used.

Complainant also admits that the Premises is a very large corner building. At the hearing, he bragged that he had so many buildings that he used computer systems to keep up with appointments. As an astute businessman with at least 39 units, it is rather unbelievable that

the Complainant continued to pass on heat and hot water costs to his tenants for a one year period between May 17, 2001 and June 15, 2001, but failed to note in his system that he was not receiving a gas bill from Peoples Gas. It is rather convenient that he paid nothing to Peoples Gas during this same period and has continued to receive the benefit of that non-payment.

D. The Degree Day Analysis Supported the Amount Billed.

The Degree Day Analysis is an accepted alternate method of billing for public utilities. *e.g.* Rodriguez v. Peoples Gas, Docket 88-0169 (1988). At the customer's request, Peoples Gas examined each and every month and manually rebilled the customer. (Tr. 145.) Mr. Schaeffer conducted a degree day analysis for each month and provided the worksheet and the final bill to the Complainant. See Respondent's Ex. 6. He also prepared a degree day analysis for the period between October 2, 2001 and April 25, 2002. (Tr 167.) The comparisons showed that when the degree day formulation was used that the customer bills used 6.10 therms per degree day. When compared to the bills based upon the actual reading it was 5.534 therms per degree day which was very close and "consistent". (Tr 170.) Based upon the customer requested manual rebilling, Peoples Gas determined that the Complainant owed \$61,685.39 at that time. Respondent Ex. 3, Line 17. These bills were presented to the Customer. The Complainant however continued to dispute the bill and the amounts owed to Peoples Gas continued to increase.

E. The Commission's rules allow Peoples Gas to bill for a security deposit.

The Complainant appeared shocked by Peoples request for a security deposit. In fact, he testified that he was "startled". 83 Ill. Admin Code §280.70(b). plainly allows the Company to request a deposit. Peoples did so on the Complainant's bills. See Complainant's Exhibit 25-28. The Complainant's basic position is that he can heat a large commercial building and not pay regular gas bills or pay deposits as is required of every other customer under Peoples Gas tariffs

and the Commissions rules.

It just isn't credible to say that the amount of gas Peoples Gas is billed to Complainant for heat and hot water at such a large Premises could not have been used.

CONCLUSION

Peoples Gas evidence shows that the Complainant owed Peoples Gas a total of \$75,664.40 as of January, 2003. The evidence shows that Peoples Gas has not violated any rules or regulations of the Commission. The record presented shows that Peoples Gas has conducted a full field investigation and a system investigation of the Premises and the Account in order to determine the proper amounts owed. Peoples Gas has provided estimated bills based upon lack of access to the premises. Because the bill was a lump sum and balloon bill, Peoples Gas offered the Complainant 17 months in order to repay the bill. The installment plan was rejected. Peoples Gas has also provided bills based upon actual readings and also bills based upon a degree day analysis. These bills were also disputed. Peoples Gas has also given credits to the account when appropriate. Peoples Gas has demanded a security deposit. This request was found "startling".

Each and every action taken by Peoples Gas has been in compliance with the Commission's rules. This is the Complainant's dispute and he has failed to produce any evidence to show that Peoples Gas has violated any rule or regulation of the Commission. The Complainant has shrewdly avoided paying for a \$53,685.39 bill that was initially issued in 2001, which has now grown to \$75,664.40 as of January 14, 2003.

WHEREFORE, Peoples Gas respectfully requests that the Administrative Law Judge issue a Proposed Order that would deny the Complaint.

DATED: September 2, 2005

Respectfully submitted,

THE PEOPLES GAS LIGHT AND
COKE COMPANY

By: /s/ Greta G. Weathersby
One Of Its Attorneys

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COMPLAINANT'S EXHIBITS

<u>EXHIBITS</u>	<u>DOCUMENTS</u>	<u>RULING</u>
1	5/1/01 letter to ICC	Admitted
3	5/18/01 Peoples letter to Malry	Admitted
4	5/17/01 Acct. 7220 bill	Admitted
5	6/18/01 Acct. 1555 bill	Admitted
6	7/18/01 Acct. 1555 bill	Admitted
7	6/15/01 Acct. 7220 bill	Admitted
8	7/17/01 Acct. 7220 bill	Admitted
9	8/16/01 Acct. 7220 bill	Admitted
11	10/17/01 Acct. 7220 bill	Admitted
12	11/16/01 Acct. 7220 bill	Admitted
13	Meter P1683266 8-16-01 bill	Admitted
14	12/21/01 Acct. 7073 bill	Admitted
15	1/21/02 Acct. 7073 bill	Admitted
16	2/20/02 Acct. 7073 bill	Admitted
17	3/21/02 Acct. 7073 due 4/5/02 bill	Admitted
18	4/25/02 Acct. 7073 bill	Admitted
19	4/18/02 Acct. 7073 bill	Admitted
21	6/17/02 Acct. 7073 bill	Admitted
22	7/17/02 Acct. 7073 bill	Admitted
23	8/16/02 Acct. 7073 bill	Admitted
24	9/16/02 Acct. 7073 bill	Admitted
25	10/16/02 Acct. 7073 bill	Admitted
26	12/17/02 Acct. 7073 bill	Admitted
28	1/16/03 Acct. 7073 bill	Admitted
29	Barna to Malry fax 11/13/01	Admitted
30a	Malry to Barna ltr. 11/14/01	Admitted
30b	Group degree Day Analysis	Admitted
30b(1)	Acct. 7073 billing ending 6/15/00	
31	Schaffer to Malry ltr. 12/10/01	Admitted
32	Malry to Schaffer ltr. 12/19/01	Admitted
33	Malry to Terry ltr. 2/15/02	Admitted
34	7/17/02 Acct. 7220 bill	Admitted
35	2/15/02 Acct. 7220 bill	Admitted

EXHIBIT A

36	3/18/02 Acct. 7220 bill	Admitted
37	5/15/02 Acct. 7220 bill	Admitted
38	6/14/02 Acct. 7220 bill	Admitted
39	1/03/02 Acct. 7220 bill	Admitted
41	Report 6/20/00	Admitted
42a	Report 10/2/01	Admitted
42b	Report 11/02/0	Admitted
43	Report 11/29/01	Admitted
44	Report 10/10/02	Admitted

PEOPLES EXHIBIT

<u>EXHIBITS</u>	<u>DOCUMENTS</u>	<u>RULING</u>
1	Computer Printout, Coyle Investigation	Admitted
2	Photos	Admitted
3	Account Transcript	Reserved
4	Service Order	Admitted
5	Account Profile	Admitted
6	Bills and Degree Day Analysis	Admitted
7	Degree Day Analysis	Admitted
8	Meter Reading Report	Reserved

EXHIBIT B

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

I, Greta G. Weatherby, being first duly sworn upon oath, depose and say that I have read the above and foregoing Respondent's Initial Brief by me subscribed and know the contents thereof; and that said contents are true in substance and in fact.

Greta G. Weathersby

SUBSCRIBED AND SWORN
before me this 2nd day
of September, 2005.

Notary Public in and for the
County of Cook, Illinois

My Commission Expires:_____

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this Respondent's Brief by causing a copy to be mailed to the administrative Law Judge and the Complainant by First Class U.S. Mail, postage prepaid on September 2, 2005.

/s/ Greta G. Weathersby